THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.20323 of 1995

Date: 26.12.2006

Between:

General Manager,
Singareni Collieries Co., Limited,
Kalyanikhani, Mandamari,
Adilabad District.

... Petitioner

AND

The Presiding Officer,
Industrial Tribunal-I,
Chandravihar, Hyderabad
& others.

... Respondents

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ORDER:-

The Management of the Singareni Collieries Company Limited filed this writ petition questioning the Award of the Industrial Tribunal-I, Hyderabad, the 1st respondent herein, in I.D.No.16 of 1991 dated 05.10.1994 whereunder the petitioner was directed to fix the pay of six workmen viz., Sri T. Iylaiah, Sri U.Balaiah, Sri N.Posham, Sri J.Iylaiah, Sri H.Lingaiah and Sri K.Raji Reddy, belonging to the 2nd respondent Union on par with their junior Sri Arepalli Madaniah, from the date he was given basic pay of
Rs.55.38 ps., with all other consequential reliefs.

The facts, which are not in dispute, are that the said six workmen were promoted to Category-IV of daily rated workers with effect from 01.03.1986 and were confirmed in that category with effect from 01.06.1986. Whereas, Sri Arepalli Madaniah, who was working as Khalasi, was promoted to Category-IV in the year 1988. The grievance of the 2nd respondent Union raised before the 1st respondent was as Sri Arepalli Madaniah was admittedly a junior to the said six workmen, his basic pay was fixed in

Category-IV at higher than the basic pay fixed to the said six workmen. The 2nd respondent Union therefore relied upon the proceedings dated 28.12.1989 of the Joint Bipartite Committee for the Coal India Limited which purported to rectify the anomalies of seniors drawing lesser scale than their juniors.

The petitioner contested the dispute raised by the 2nd respondent Union before the 1st respondent by filing counter-affidavit and relevant material. The 1st respondent passed the Award impugned in this writ petition giving the relief as mentioned above.

Counsel for the respondents is not present.

Heard Miss V.Uma Devi, learned counsel for the petitioner.

The learned counsel for the petitioner submitted that the 1st respondent committed a serious error in allowing the claim of the six workmen relying upon the Implementation Instruction No.18 dated 28.12.1989 of the Joint Bipartite Committee for the Coal Industry. She contended that the said circular has no application to the present case, since the said instruction envisages rectification of anomalies in cases where the senior employees were getting prior to their promotion, the same pay or higher pay in NCWA-III pay scales qua their juniors. She invited my attention to the counter-affidavit filed by the petitioner Management before the 1st respondent and it is apt to extract the relevant portion as under:

"The fixation of wages/salary to the six claimants are as per Annexure II-C of the National Coal Wage Agreement-IV which is a part of the Settlement. It is not their case that the settlement has been violated. The following are the details of the workmen in dispute with regard to their fixation. At the time of promotion to Category-IV the basic pay fixations of the workmen in dispute were done in accordance with the NCWA-III and with effect from 01.01.1987 their basic were revised as per NCWA-IV scales. It is denied that the workmen in dispute were drawing basic pay of Rs.34.50 as on 31.12.1986 in NCWA-III pay scales and that their basic pay was fixed at Rs.54.06 at the commencement of NCWA-IV. The workmen in dispute were drawing a basic of Rs.32.10 ps. (in respect of T.Iylaiah, U.Balaiah, N.Posham and J.Iylaiah) and H.Lingaiah and Raji Reddy were drawing Rs.31.30 ps as on 31.12.1986 in NCWA-III scales and after introduction of NCWA-IV scales from 01.01.1987 all the above persons were given the basic pay of Rs.50.10 ps., with effect from 01.01.1987. On granting annual increments their basic pay was Rs.51.42 ps., as on 01.03.1987; Rs.52.57 p.s., as on 01.03.1988; and Rs.54.06 ps., as on 01.03.1989 and so on. Sri A.Madanaiah, was promoted to Category-IV as on 01.08.1988 and prior to his promotion he was drawing Rs.50.50 ps., in Category-III as on 01.03.1987 and Rs.51.58 ps., as on 01.03.1988. On promotion to Category-IV with effect from 01.08.1988 the basic payoff Sri Arepalli Madanaiah was appropriately fixed at Rs.54.06 ps., and after earning annual increment his basic pay was Rs.55.38 ps., as on 01.03.1989."

The learned counsel therefore contends that the Implementation Instruction No.18 per Se has no application for the

reason that the said Arepalli Madanaiah was drawing higher pay in Category-III than his seniors.

I see force in the contention of the learned counsel for the petitioner. Para 2 of the Implementation Instruction No.18 dated 28.12.1989 is extracted hereunder:

> "It has been pointed out that in some cases, employees who are senior in the same pay scales and covered by the same seniority list in a cadre have secured fixation at a lower stage than their juniors in the same cadre who were promoted after 01.01.1987 (after implementation of NCWA-IV) even though the said senior employees were getting prior to their promotion the same pay or higher pay in NCWA-III pay scales as their juniors in question. It has been decided that such individual cases will be checked up and where such an anomaly has occurred, the pay of senior employees in the individual cases will be stepped up to the level of the pay of junior employees concerned from the date the anomaly has arisen i.e., after 01.01.1987 and from the date the junior was promoted giving rise to the anomaly in question. It has to be ensured that for the removal of the anomalies, the basic conditions stipulated above would have to be fulfilled before initiating any action."

From the afore-extracted instruction, it is clear that in order to get the pay anomaly rectified, the condition precedent to be satisfied is that the senior employees, prior to their promotion, should have been getting the same pay or higher pay qua their juniors in question. Neither before the 1st respondent nor in this

Court, the 2nd respondent Union has denied the averment of the petitioner that Arepalli Madanaiah was getting higher pay in Category-III than the six workmen in the same category. In the face of this undisputed fact the said six workmen have not satisfied the essential condition contained in the implementation instruction as they were drawing only a pay of Rs.31.10 ps., or Rs.31.30 ps., as the case may be in NCWA III category while their junior was drawing the pay of Rs.51.58 ps., in the said category prior to his promotion. The 1st respondent, in my considered view, has committed a patent error by overlooking this essential and relevant fact and in granting relief to the said six workmen applying the Implementation Instruction No.18 dated 28.12.1989 which, in the admitted factual matrix has no application to this case. Thus, the Award under challenge suffers from error apparent warranting interference by this Court exercising its jurisdiction under Article 226 of Constitution of India.

In the premises as aforesaid, the writ petition is allowed, the Award of the 1st respondent is set aside. No order as to costs.

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C.V.NAGARJUNA REDDY, J

Date: 26.12.2006
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